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Attorneys for Defendant RASH CURTIS & ASSOCIATES

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SANDRA McMILLION, JESSICA ADEKOYA,  
AND IGNACIO PEREZ, on Behalf of  
Themselves and all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,

Defendant.

Case No.: 4:16-cv-03396-YGR

**DEFENDANT RASH CURTIS &  
ASSOCIATES' ANSWER TO PLAINTIFF'S  
COMPLAINT; AND DEMAND FOR JURY  
TRIAL**

Defendant RASH CURTIS & ASSOCIATES, (hereinafter "Defendant") hereby responds to  
Plaintiffs' Complaint as follows:

1. As to paragraph 1, Defendant admits that it is a debt collection agency, but denies all  
other allegations alleged herein. Defendant specifically denies that it "uses repeated, pre-recorded  
voice messages, and auto-dialed calls to threaten and harass consumers in an attempt to collect."

2. As to paragraph 2, Defendant denies these allegations.

3. As to paragraph 3, Defendant lacks sufficient information and/or belief to admit  
whether every call alleged in paragraph 3 was placed by Defendant at the date and time alleged and, on  
that basis, denies these allegations. Defendant denies any implied allegation(s) that these purported  
calls violated the federal Telephone Consumer Protection Act ("TCPA"), federal Fair Debt Collection

1 Practices Act (“FDCPA”) and/or, California’s Rosenthal Fair Debt Collection Practices Act  
2 (“Rosenthal FDCPA”).

3 4. As to paragraph 4, Defendant denies these allegations.

4 5. As to paragraph 5, Defendant lacks sufficient information and/or belief to admit  
5 whether every call alleged in paragraph 5 was placed by Defendant at the date and time alleged and, on  
6 that basis, denies these allegations. Defendant denies any implied allegation that these purported calls  
7 violated the TCPA, FDCPA and/or, Rosenthal FDCPA.

8 6. As to paragraph 6, Defendant denies these allegations.

9 7. As to paragraph 7, Defendant lacks sufficient information and/or belief to admit  
10 whether every call alleged in paragraph 7 was placed by Defendant at the date and time alleged and, on  
11 that basis, denies these allegations. Defendant denies any implied allegation that these purported calls  
12 violated the TCPA, FDCPA and/or, Rosenthal FDCPA.

13 8. As to paragraph 8, Defendant lacks sufficient information and/or belief to admit or deny  
14 why Plaintiffs are bringing this action against it for alleged violations of the TCPA. To the extent  
15 paragraph 8 alleges (expressly or implicitly) that Defendant violated the TCPA, Defendant denies  
16 those allegations.

17 9. As to paragraph 9, Defendant lacks sufficient information and/or belief to admit or deny  
18 why Plaintiffs are bringing this action against it for alleged violations of the FDCPA and Rosenthal  
19 FDCPA. To the extent paragraph 9 alleged (expressly or implicitly) that Defendant violated the  
20 FDCPA and/or Rosenthal FDCPA, Defendant denies those allegations. Defendant specifically denies  
21 that it “engaged in a campaign of harassment in an attempt to coerce payment of a consumer debt.”

22 10. As to paragraph 10, Defendant lacks sufficient information and/or belief as to Plaintiff  
23 Sandra McMillion’s residency and therefore, denies the allegations in paragraph 10 on that basis.

24 11. As to paragraph 11, Defendant lacks sufficient information and/or belief as to Plaintiff  
25 Jessica Adekoya’s residency and therefore, denies the allegations in paragraph 11 on that basis.

26 12. As to paragraph 12, Defendant lacks sufficient information and/or belief as to Plaintiff  
27 Ignacio Perez’s residency and therefore, denies the allegations in paragraph 12 on that basis.

28 13. As to paragraph 13, Defendant admits that it is a debt collector as defined by 15 U.S.C.

1 § 1692a(6) but, denies any implicit allegations that it violated the FDCPA or Rosenthal FDCPA.  
2 Defendant admits that its principal place of business is in Vacaville, California at 190 S. Orchard  
3 Avenue, but denies that it is located in Suite A-205.

4 14. As to paragraph 14, Defendant denies that this Court has subject jurisdiction over the  
5 matter pursuant to the Class Action Fairness Act of 2005 because no class has been certified and the  
6 claims of the proposed class do not exceed the value of \$5,000,000.00.

7 15. As to paragraph 15, Defendant does not contest federal question jurisdiction.

8 16. As to paragraph 16, Defendant does not contest this action being venued in the Northern  
9 District of California.

10 17. As to paragraph 17, this paragraph does not contain allegations which Defendant can  
11 admit or deny as it is a statement of legislative history regarding the enactment of the TCPA. In that  
12 regard, the allegations made in paragraph 17 are impermissibly argumentative and a legal conclusion.  
13 To the extent that Plaintiffs implicitly allege that Defendant violated the TCPA, Defendant denies  
14 those allegations.

15 18. As to paragraph 18, this paragraph does not contain allegations which Defendant can  
16 admit or deny as it is a statement regarding the prohibitions under the TCPA. In that regard, the  
17 allegations made in paragraph 18 are impermissibly argumentative and a legal conclusion. To the  
18 extent that Plaintiffs implicitly allege that Defendant violated the TCPA, Defendant denies those  
19 allegations.

20 19. As to paragraph 19, this paragraph does not contain allegations which Defendant can  
21 admit or deny as it is a statement of the Federal Communication Commission's findings regarding the  
22 enactment of the TCPA. In that regard, the allegations made in paragraph 19 are impermissibly  
23 argumentative and a legal conclusion. To the extent that Plaintiffs implicitly allege that Defendant  
24 violated the TCPA, Defendant denies those allegations.

25 20. As to paragraph 20, this paragraph does not contain allegations which Defendant can  
26 admit or deny as it is a statement of the Federal Communication Commission's findings regarding the  
27 enactment of the TCPA. In that regard, the allegations made in paragraph 20 are impermissibly  
28 argumentative and contains legal conclusions. To the extent that Plaintiffs implicitly allege that

1 Defendant violated the TCPA, Defendant denies those allegations.

2 21. As to paragraph 21, this paragraph does not contain allegations which Defendant can  
3 admit or deny as it is a statement of legislative history regarding the enactment of the FDCPA. In that  
4 regard, the allegations made in paragraph 21 are impermissibly argumentative and a legal conclusion.  
5 To the extent that Plaintiffs implicitly allege that Defendant violated the FDCPA, Defendant denies  
6 those allegations.

7 22. As to paragraph 22, this paragraph does not contain allegations which Defendant can  
8 admit or deny as it is a statement regarding the prohibitions under the FDCPA. In that regard, the  
9 allegations made in paragraph 22 are impermissibly argumentative and a legal conclusion. To the  
10 extent that Plaintiffs implicitly allege that Defendant violated the FDCPA, Defendant denies those  
11 allegations.

12 23. As to paragraph 23, Defendant denies these allegations.

13 24. As to paragraph 24, Defendant denies these allegations.

14 25. As to paragraph 25, Defendant denies these allegations.

15 26. As to paragraph 26, Defendant denies these allegations.

16 27. As to paragraph 27, Defendant denies these allegations.

17 28. As to paragraph 28, Defendant denies these allegations.

18 29. As to paragraph 29, Defendant admits that it was assigned a medical debt for collections  
19 owed by Plaintiff Ms. Adekoya. Defendant denies that it violated the TCPA, FDCPA or Rosenthal  
20 FDCPA in attempting to collect the medical debt.

21 30. As to paragraph 30, Defendant denies these allegations.

22 31. As to paragraph 31, Defendant denies these allegations.

23 32. As to paragraph 32, Defendant denies these allegations.

24 33. As to paragraph 33, Defendant denies these allegations.

25 34. As to paragraph 34, Defendant denies these allegations.

26 35. As to paragraph 35, Defendant lacks sufficient information and/or belief to admit or  
27 deny these allegations and on that basis, denies these allegations.

28 36. As to paragraph 36, Defendant denies these allegations.

1           37. As to paragraph 37, Defendant lacks sufficient information and/or belief to admit or  
2 deny these allegations and on that basis, denies these allegations.

3           38. Paragraph 38 contains a list of purported online consumer complaints regarding  
4 Defendant. These purported online consumer complaints are impermissibly argumentative and  
5 irrelevant to the Plaintiffs' Complaint and the causes of action alleged therein.

6           39. As to paragraph 39, Defendant cannot admit or deny why Plaintiffs' bring this action  
7 against it. To the extent the allegations in paragraph 39 imply that Defendant violated the TCPA,  
8 FDCPA, or Rosenthal FDCPA, Defendant denies those allegations. Defendant additionally denies that  
9 there is any class as alleged, as no class has been certified in this case, and on that basis denies each  
10 and every allegation in this paragraph.

11           40. As to paragraph 40, Defendant denies that there is any class as alleged, as no class has  
12 been certified in this case, and on that basis denies each and every allegation in this paragraph.

13           41. As to paragraph 41, Defendant denies that there is any class as alleged, as no class has  
14 been certified in this case, and on that basis denies each and every allegation in this paragraph.

15           42. As to paragraph 42, Defendant denies that there is any class as alleged, as no class has  
16 been certified in this case, and on that basis denies each and every allegation in this paragraph.

17           43. As to paragraph 43, Defendant denies that there is any class as alleged, as no class has  
18 been certified in this case, and on that basis denies each and every allegation in this paragraph.

19           44. As to paragraph 44, Defendant denies that there is any class as alleged, as no class has  
20 been certified in this case, and on that basis denies each and every allegation in this paragraph.

21           45. As to paragraph 45, Defendant denies that there is any class as alleged, as no class has  
22 been certified in this case, and on that basis denies each and every allegation in this paragraph.

23           46. As to paragraph 46, Defendant denies that there is any class as alleged, as no class has  
24 been certified in this case, and on that basis denies each and every allegation in this paragraph.

25           47. As to paragraph 47, Defendant denies that there is any class as alleged, as no class has  
26 been certified in this case, and on that basis denies each and every allegation in this paragraph.

27           48. As to paragraph 48, Defendant denies that there is any class as alleged, as no class has  
28 been certified in this case, and on that basis denies each and every allegation in this paragraph.

1           49. As to paragraph 49, Defendant denies that there is any class as alleged, as no class has  
2 been certified in this case, and on that basis denies each and every allegation in this paragraph.

3           50. As to paragraph 50, Defendant denies that there is any class as alleged, as no class has  
4 been certified in this case, and on that basis denies each and every allegation in this paragraph.

5           51. As to paragraph 51, Defendant denies that there is any class as alleged, as no class has  
6 been certified in this case, and on that basis denies each and every allegation in this paragraph.

7           52. As to paragraph 52, Defendant denies that there is any class as alleged, as no class has  
8 been certified in this case, and on that basis denies each and every allegation in this paragraph.

9           53. As to paragraph 53, Defendant denies that there is any class as alleged, as no class has  
10 been certified in this case, and on that basis denies each and every allegation in this paragraph.  
11 Defendant further denies that there is a common question of law and fact among the named Plaintiffs.

12           54. As to paragraph 54, Defendant denies that there is any class as alleged, as no class has  
13 been certified in this case, and on that basis denies each and every allegation in this paragraph.

14           55. As to paragraph 55, Defendant denies that there is any class as alleged, as no class has  
15 been certified in this case, and on that basis denies each and every allegation in this paragraph.

16           56. As to paragraph 56, Defendant denies that there is any class as alleged, as no class has  
17 been certified in this case, and on that basis denies each and every allegation in this paragraph.

18           57. As to paragraph 57, Defendant denies that there is any class as alleged, as no class has  
19 been certified in this case, and on that basis denies each and every allegation in this paragraph.

20           58. As to paragraph 58, Defendant incorporates its responses to paragraphs 1 through 57 as  
21 though fully stated herein.

22           59. As to paragraph 59, Defendant denies these allegations.

23           60. As to paragraph 60, Defendant denies these allegations.

24           61. As to paragraph 61, Defendant denies these allegations.

25           62. As to paragraph 62, Defendant denies that Plaintiffs' counsel is entitled to an award of  
26 attorneys' fees for any alleged violations of the TCPA as the TCPA does not contain a fee-shifting  
27 provision. Defendant denies that Plaintiffs are entitled to an award of costs. Defendant further denies  
28 that it violated the TCPA.



63. As to paragraph 63, Defendant incorporates its responses to paragraphs 1 through 60 as though fully set forth herein.

64. As to paragraph 64, Defendant denies these allegations.

65. As to paragraph 65, Defendant denies these allegations.

66. As to paragraph 66, Defendant denies these allegations.

67. As to paragraph 67, Defendant denies that Plaintiffs' counsel is entitled to an award of attorneys' fees for any alleged violations of the TCPA as the TCPA does not contain a fee-shifting provision. Defendant denies that Plaintiffs are entitled to an award of costs. Defendant further denies that it violated the TCPA.

68. As to paragraph 68, Defendant incorporates its responses to paragraphs 1 through 67 as though fully set forth herein.

69. As to paragraph 69, Defendant denies these allegations.

70. As to paragraph 70, Defendant denies these allegations.

71. As to paragraph 71, Defendant incorporates its responses to paragraphs 1 through 70 as though fully set forth herein.

72. As to paragraph 72, Defendant denies these allegations.

73. As to paragraph 73, Defendant denies these allegations.

74. As to paragraph 74, Defendant denies these allegations.

Pursuant to Federal Rule of Civil Procedure 8(c), Defendant sets forth the following matters constituting an avoidance or affirmative defense:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint (and the causes of action alleged therein) fails to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

Defendant alleges that the Complaint (and each cause of action therein) is barred in whole or in part, by the applicable statutes of limitations.

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**THIRD AFFIRMATIVE DEFENSE**

In an abundance of caution<sup>1</sup>, Defendant alleges that it has no or limited civil liability under the TCPA, 47 U.S.C. § 227 *et seq.* pursuant to 47 U.S.C. § 227(b)(3)(C) because Defendant's acts were taken with the prior express consent of Plaintiffs.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant alleges that it has no civil liability under the FDCPA, 15 U.S.C. § 1692 *et seq.*, because, pursuant to 15 U.S.C. § 1692k(c), any alleged violation was unintentional and resulted despite the maintenance of procedures reasonably adopted to avoid any such violation.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant alleges that it has no civil liability, under the Rosenthal FDCPA, California Civil Code § 1788 *et seq.*, because, pursuant to Civil Code § 1788.30(e), as any violation was unintentional and resulted from the maintenance of procedures reasonably adopted to avoid any such violation.

**SIXTH AFFIRMATIVE DEFENSE**

Defendant alleges that Plaintiffs have not suffered a concrete and particularized injury for the alleged violations of the TCPA, FDCPA, and Rosenthal FDCPA so as to confer Article III standing upon them.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are not suitable for class certification because, among other reasons, issues that require separate adjudication predominate over common issues; and, accordingly, the maintenance of a class action would not be superior or otherwise advantageous to the judicial process and litigants.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are not suitable for class certification because, among other reasons, there is no definitely ascertainable class, the members are not clearly identifiable, and the members of the putative classes cannot be located without incurring an exorbitant expenditure of time and money.

**NINETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are not suitable for class certification because, among other reasons, Plaintiffs

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<sup>1</sup> Defendant does not concede the prior express consent is an affirmative defense; but, is rather, an element of Plaintiffs' *prima facie* case.



are not adequate representatives for the putative classes.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because neither Plaintiff nor the members of the putative classes have suffered the type of harm which the TCPA was designed to protect.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendant hereby gives notice that it intends to rely upon any other affirmative defenses as may become available and apparent during discovery in this action and reserves the right to amend its Answer to assert such defenses.

**WHEREFORE**, Defendant prays for:

1. That Plaintiffs take nothing from this answering Defendant by this Complaint;
2. That Defendant be awarded judgment in this action;
3. For attorneys' fees incurred herein, pursuant to statute;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems proper.

Dated: July 18, 2016

ELLIS LAW GROUP LLP

By /s/ Amanda N. Griffith

Amanda N. Griffith  
Attorney for Defendant  
RASH CURTIS & ASSOCIATES

**DEMAND FOR JURY TRIAL**

Defendant RASH CURTIS & ASSOCIATES hereby demands a jury trial in this matter.

Dated: July 18, 2016

ELLIS LAW GROUP LLP

By /s/ Amanda N. Griffith

Amanda N. Griffith  
Attorney for Defendant  
RASH CURTIS & ASSOCIATES